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ABSTRACT

Arguing violation of the equal protection clause of Federal and State constitutions, court actions in several States have challenged the method of financing public education. The issues raised concern interdistrict differentials in assessed valuation of properties. These differentials result in lower per-pupil funds for urban and rural districts even though these districts are taxing to the maximum allowable. Defendants admit inequalities, but assert that courts have neither the powers nor the skills needed to equalize education. To date, no court has found these financing inequalities to be unconstitutional. (JF)

LAW, AND EQUAL RIGHTS FOR EDUCATIONAL OPPORTUNITY

SHARON WHITE

Tne subject of this morning's discussion is legal action as it relates to equal rights for educational opportunity. Because such a discussion topic is a very large one, I am only going to speak about the broadest and most recent legal actions to raise the issue: a number of recents challenging the manner in which the states finance their systems of public education. Students, parents, school boards, and taxpayers in the states of Texas, Michigan, Virginia, Wisconsin, California, New Jersey, and Illinois have brought action against those states, stating that their methods of financing public education violate the Equal Protection Clauses of the Federal and State Constitutions. Legally speaking, a violation of the Equal Protection Clause arises when a state by some action treats persons in the same class in a discriminatory manner, without a justifiable reason for that action. In the education finance cases, the plaintiffs state that as parents, students, school boards, or what have you, they are being discriminated against by state law, when they are in the same class as other of the states' parents, students, and school boards, who are in a better position. Legal action is directed against the states because the states have assumed in their constitutions the obligation of providing free or public education, and because it is the states that are responsible for creating the

laws which establish the manner in which state public education is financed.

The ultimate cause of the Constitutional infringements in issue is the element of finance systems which link educational expenditures in the individual school districts to the amount of money the districts can raise through local property taxes, without any apportionment to equalize the districts' tax resources: an element resulting in vast inter-district differences in per pupil expenditures and educational facilities. Parents and students in the various education finance cases object to inter-district differentials in assessed valuation of properties, and point to the irrelevance of the district tax system in terms of educational need. They object to ceilings on education tax rates. They point to the failures of the state components of education funding: that they are inadequate to alter to any degree the inter-district differences in per pupil expenditure; that many provisions only aggravate the differentials which exist. Taxpayers object to high tax rates which result in low district tax yield, when the same and lower tax rates result in greater yield in other districts. Plaintiffs object in general to systems of financing which are not meeting the educational needs of great numbers of the states' public school students.

Typical of the case allegations are those of the Board of Education of Detroit v. Michigan, in which the Detroit School Board, Detroit students, and their parents allege that the state's mechanism

of education finance creates inter-district disparities in school funding and offering, disparities which prevent Detroit schools from offering educational resources and opportunities substantially equal to those of other school districts. They state that Michigan's allocation of school funds lacks any relation to variations in expenditure needs, which flow from variations in such factors as student populations; educational facilities; and level of educational costs of such items as school construction and teacher salaries. The case represents the cities' complaints with regard to the heavy burdens on their tax dollar and to the fact that their lower to average per pupil expenditure is not sufficient to offer the educational opportunities provided in the state's suburban districts. It represents the cities' frustration when faced with the different, and often more expensive, educational needs of large numbers of disadvantaged students, and the lack of means for procuring the necessary resources.

Others of the education finance cases, such as the one which arose in Bath County, Virginia, represent the complaints of the rural school district. Plaintiffs in that case stated that the educational resources of their district were not sufficient to provide the vocational education available in other districts; to provide educational facilities which meet tests of adequacy; or a curriculum with a sufficient range of courses to entitle graduates of the county's school to enter many state institutions of higher learning.

Certain of the cases speak of other discrimination. A case in Texas draws a correlation between districts of high and low per pupil expenditures and districts of high and low concentrations of minority students. The case in Bath County, Virginia, drew the correlation between districts of high and low expenditure and districts with high and low concentrations of persons with low income.

Most of the education finance cases do not ask for a specific remedy. They do not request that particular aspects of the financing scheme be restructured--for example, that the district tax system be abolished, or that the state aid portions of school funding be refashioned so as not to discriminate against poorer districts. Most of these cases ask only that the state laws which establish the manner of state financing of education be declared unconstitutional and that the legislature be given a reasonable time to enact laws which would meet constitutional requisites.

To this date, only two of the education finance cases have been finally decided by the courts: both by federal district courts, in decisions which the Supreme Court affirmed. The first was a case which arose in Chicago, Illinois, in which students attending school districts in Cook County charged that the state acted unconstitutionally in creating a finance system which resulted in their school districts being funded far below other districts in Illinois. They alleged that the result was disparities in educational programs, facilities, and services, and in the levels of educational attainment.

They asked that Illinois laws authorizing distribution of public school funds "not based upon the educational needs of children" and resulting in unequal per pupil expenditures be declared unconstitutional.

The Illinois complaint was dismissed by a three-judge court. Its opinion recognized that there were wide variations in the amount of money available for Illinois school districts, on both a per pupil basis and in absolute terms," and that "presumably students receiving a $1000 education are better educated than those acquiring a $600 schooling." Yet, it held that the Illinois education finance statutes were Constitutional. The court found Constitutional justification for the per pupil disparities in the state's maintenance of a system of local school districts, which, it said, enabled local communities to determine the value they placed on education --particularly as the state made provision for a $400 minimum expenditure guarantee for every student. The court went on to state that in any event, "equal educational opportunity was not "a constitutional requisite," and the controversy was not one which the court could decide. Interpreting the plaintiffs' complaint as seeking a declaration that the Federal Constitution compels states to allocate public school aid on the sole basis of pupils' educational needs, it stated that while the only measurable standard of educational need was a standard of equal school expenditures per student, expenses were not the exclusive yardstick of educational needs.

The decision was appealed to the Supreme Court; and at that point the National Education Association, the Urban Coalition, the Research Council of the Great Cities Program for School

Improvement, and the Lawyers Committee for Civil Rights Under Law took issue with the decision of the federal court. In a brief which those organizations filed in the Supreme Court, they first summarized the facts:

"Plaintiffs' school districts, and the other school districts in Illinois, raise money and otherwise receive financial support in accordance with a multitude of State laws. The principal provision for public school funds is the State law authorizing each school district to impose a tax upon property within the district at any rate up to a specified ceiling. The school districts in which Plaintiffs reside have set such property tax rates near the upper limit permitted by Illinois law. Accordingly, Chicago, a district in which two Plaintiffs reside, taxes at a 1.9% rate, only 0.1% below the rate ceiling set for Chicago by State law. Yet, despite these tax rates, Plaintiffs' districts can collect much less revenue per pupil than other districts because valuation of taxable property per pupil within them is so much lower. Thus, while Chicago, taxing at the ceiling rate of 2.0%, could obtain $460 per pupil, Monticello, which in fact only taxes at a rate of 0.5%, could obtain $2,280 per pupil at a 2.0% rate. Thus, the necessary result of the wide variation in the value of taxable property per pupil, and statutory reliance on the value of district property as the primary source of revenue, is wide variation in per pupil expenditure from district to district. As the court below indicated, the difference between high and low pupil expenditure per annum in elementary school districts is in the ratio of 3.0 to 1; in high school districts, 2.6 to 1; unit districts (grades 1-12) 1.7 to 1."

" Further, while the State supplements the school funds raised locally by property taxes collected pursuant to State law, those payments, from a State Common School Fund derived from State revenues other than the district property tax, fail to equalize the disparities resulting from the basic property tax element in the school funding machinery. Thus, the "flat" grant, which provides each district with an equal supplement for each of its students in average daily attendance, has no effect on the per pupil expenditure disparity between districts with high property values and those with lower ones. Indeed, as detailed below, the grant serves to aggravate that disparity.

" The "equalizer grants," also provided for by statute from the Common School Fund, do not correct the discrimination between pupils in wealthy districts and those in poor ones. While such grants provide that the State will make available to districts the difference between a $400 per pupil revenue and the amount raised by taxing at a statutorily defined minimum tax rate plus the flat grant, the poorer districts cannot compensate for the inequalities in funding produced by inter-district variations in property values. Additionally, because the equalizer grant is awarded after the flat grant is added to local revenues raised at the qualifying rate, the wealthy districts benefit in full from the flat grant, whereas the poor districts receive a reduced benefit or none at all.

'Hence, despite State assistance, the amounts spent on education per student in Plaintiffs' school districts are still "far below" expenditure in other Illinois districts.

'As Plaintiffs directly allege, students in Plaintiffs' districts suffer severe disadvantages relative to students in more affluent districts because the value of the property within each of those districts, in proportion to the number of students in each, is below the comparable valuation in other districts in the State. Thus, the suggestion of the Court below that the inter-district expenditure differentials are or may be due to the low value Plaintiffs' districts attach to education, compared to either the values these districts place on other district needs or the value other districts place on education, is completely unwarranted; Plaintiffs' districts have been spending almost all the law permits them to spend on their students' education, and have assumed a tax burden, in terms of tax rate, as heavy as or heavier than the like burden assumed by most other districts in the State.

"As a result of the inequalities in financial support outlined above, the "educational programs, facilities, and services" available in Plaintiffs' districts are decidedly poorer than those provided in other districts in the State and as a direct result, the education received by Plaintiffs is decidedly inferior and unequal."

The brief went on to state that while variations in the value of taxable property per student in Illinois, from $114,000 to $3,000, would be serious enough if confined to that state alone, it appeared that such variations were not so confined.

The crux of the organizations' legal argument was the following: that the district court had applied the wrong constitutional test to determine the constitutionality of the state's action and that even under the test which it had applied, the court had erred in finding that Illinois education financing statutes were unconstitutional: "Whatever," they said, "may be the rational reason for having a statewide school system set up and financed through local subdivisions of the state, no Constitutional justification exists for the financing of public education in such a manner that the amount of public funds available for a child's education depends upon the property values of the neighborhoood in which he lives.

There were a number of other organizations, including the American Federation of Teachers, the AFL-CIO, and the Western Center on Law and Poverty which filed briefs. However, the Supreme Court decided not to hear the case, with only one Justice dissenting, and affirmed the decision of the federal court.

Those decisions were determinative of the dismissal of a California education finance case from the lower state court in which it had been filed, and its appeal to the intermediate state court. Those decisions were also determinative of the dismissal of the Bath County, Virginia, case from the federal court in which it had been filed. In that case, students and taxpayers of Bath County, where 46% of the residents earn less than $3000 a year, requested an end to

educational discrimination related to their poverty. They alleged that the education finance system prevented them from raising the revenues necessary to provide minimal educational opportunity, even while their local tax rates were set at the legal ceiling. In addition, they alleged discrimination in the gearing of state educational aid supplements to the level of local tax revenues, a factor actually increasing total education resource disparities between school districts. Plaintiffs further alleged unconstitutional state action in Virginia's failure to make provision for the added costs necessary to provide their rural area equal educational opportunities in terms of buildings, equipment, teachers, books, and curriculum.

Initially, it had appeared that the Bath County students would obtain judicial relief. In a decision ruling on a prior motion to dismiss, the deciding Federal District judge had stated:

"The right to an equal educational opportunity was clearly recognized in Brown v. Board of Education... While racial discrimination is not an issue in this proceeding, at least one recent interpretation of this right to an equal educational opportunity suggests that the right protects individuals not only from discrimination on the basis of race, but also on the basis of poverty." He cited the Hobson v. Hansen case arising in the District of Columbia.

"Poverty does appear to be a factor contributing to the conditions which give rise to the plaintiffs' complaint. It is clear

beyond question that discrimination based on poverty is no more permissible than racial discrimination, and that the discrimination on the part of state officials need not be intentional to be condemned under the equal protection clause...The rationale of these decisions appears to be that state policies imposing conditions on the exercise of basic rights, which conditions operate harshly upon the poor, must be clearly justified in order to be constitutionally permissible."

However, a subsequently convened court dismissed the Bath County complaint. The court found:

"The existence of such deficiencies and differences is forcefully put by plaintiffs' counsel. They are not and cannot be gainsaid. But we do not believe they are creatures of discrimination by the State. Our reexamination of the Act confirms that the cities and counties receive State funds under a uniform and consistent plan... The plaintiffs seek to obtain allocations of State funds among the cities and counties so that the pupils in each of them will enjoy the same educational opportunities. This is certainly a worthy aim, commendable beyond measure. However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of those students throughout the State."

In November of 1969 plaintiffs in the Bath County case appealed the decision to the U. S. Supreme Court. On February 24, the Supreme Court affirmed the federal court decision.

Another education finance case is pending in the U. S. District Court for the Western District of Texas. Plaintiffs here, as in the other cases, claim that the State financing system discriminates against them in terms of fewer education resources and lower quality of education. They also allege that the finance system fosters racial discrimination.

A case in the state courts of Wisconsin similarly alleges substantial disparities in the quality and extent of public education as a result of the State's finance system. Plaintiffs allege that the state public school aid serves only to perpetuate school fund inequalities arising from differences in the tax capabilities of school districts; they assert that it fails to take into account the varying conditions of school facilities, and the varying needs and costs of education in different school districts. Plaintiffs ask that reapportionment of school districts be ordered.

Although none of the education finance cases have been favorably decided by a court, it is far, far too early to know what the final outcome will be. Because each of the cases is a little different, one of the courts could well decide that the case before it is sufficiently distinguishable from cases previously decided that prior decisions need not control the case's outcome.

That is not to say that the plaintiffs have an easy road ahead. They must overcome a number of arguments made by defendants, arguments which find support in prior court decisions.

While plaintiffs can show vast education inequalities, defendants argue that those inequalities may not give rise to a judicially redressable case under the Equal Protection Clause. They argue that inequality in public schooling does not result from invidious discrimination and accordingly does not transgress the Fourteenth Amendment. Defendants assert that the subject of plaintiffs' complaint is not one to which courts will apply the equal protection standard; that the area of public welfare expenditures is constitutionally left within the discretion of the state; and that in any event the state bears no constitutional burden to preclude public service differentials flowing from local taxable wealth differences. Even stronger objections are voiced when defendants assert that courts do not have the power or the skills needed to equalize public education.

On the other hand, the plaintiffs can use various court decisions to support their arguments that such contentions are not correct or that such contentions do not state the law.

However, even if the courts finally decide that the state laws for financing systems of public education are unconstitutional, those decisions will only be a beginning. Equally important will be the test they use to determine what kind of educational financing systems meet constitutional requisites. It is far easier to state what does not constitute equal protection of the law in public education than what does--for example, to find that it is unconstitutional to finance public education in such a manner that the

amount of public funds available for a child's education depends upon the property values of the neighborhood in which he lives, rather than to define learning opportunities which must be offered to all state students.

Even more important will be the legislatures' determination of how court requirements will be implemented. These will not be easy determinations, as even apart from legal and political limitations, it is difficult to determine what should constitute equitable education financing. Thus, while one possible solution would be to provide each of the state's children with equal school expenditure, and while such a formulation has the benefit of being definitive, a dollar equivalence standard would actually validate inequality in education because the cost of providing equivalent schooling varies greatly among schools and districts due to varying teacher pay, school plant maintenance, pupil transportation and like factors. Moreover, it may be said with some cogency that the school child is being given education, not dollars, and it is the education which should be equal.

Another possible standard, that of providing equal education resources for every child, would avoid the inequality of dollar equivalence. However, such a standard does not appear sufficiently elastic to permit weighting for the greater expenditure burdens involved in providing the compensatory services necessary to teach disadvantaged children with physical, mental, or cultural learning

disabilities.

While a goal of providing equal learning opportunity would provide sufficient flexibility to encompass measurable overburdens in educating certain school populations and while such a standard finds support in some established school practices, it will not be an easy matter to identify and recognize what such obligations mean in operational circumstances.

The remedies available for making changes in the educational finance system also offer difficult choices. First, school district boundaries might be redrawn to equalize their taxable wealth quotients. Such a course would provide districts with equal power to offer education and yet retain a local option to decide the desired school tax rate. Yet, it might be difficult in a practical sense to set school district boundaries in such a way as to allow each district a substantially equal tax base. Moreover, district reapportionment would not appear to provide the desired equal educational opportunities in school districts with substantial education overburdens.

Similar difficulties are encountered in the suggested schemes for pooling or shifting funds raised by the several school districts--for example, by the power equalizing scheme proposed by a professor at Berkeley and others. Under that proposal the state would establish permissible educational expenditures for various levels of local taxation, while those revenues representing funds in excess of the permitted expenditures would be used, in combination

with state aid, to raise the funds of poorer districts to the level of the pupil expenditures established by their rate of taxation. Power equalizing thus seeks to leave the rate of taxation in local hands, but to shift to other districts so much of a wealthy districts' tax revenue as is attributable to its above-average aggregate property values. Like school district realignment, power equalizing creates dollar equivalency rather than education or learning opportunity equality. A probable result would be continued gross school inequalities in districts having education overburdens and citizens disinclined to vote heavy school tax rates.

Alternatively, public education might be financed through a state property tax. By eliminating dependence on local property taxes, that course would alleviate the problem of lack of resources in poor districts. The mechanism might also be formulated in such a way as to retain a local option to surtax for additional education. A related possiblity is the provision of all public education funding through state sales or income taxes. Such a proposal is espoused in model legislation drafted by the Advisory Commission on Intergovernmental Relations.

The message is loud and clear: that the creation of quality and equitable education finance systems may begin with a court decision, but in the end will depend on enlightened legislatures and an insistent and informed citizenry.*

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